done in the course of their employment an action may be brought based on negligence of the defendant's servants for which the defendant is liable because the act took place in the course of his servant's employment, or an action may be brought in that case based on violation of the duty owed by the defendant to the plaintiff under the contract between the defendant and the plaintiff. But where (as was the case in Bryant *v.* Rich and in the case at bar) the injury done the plaintiff is caused by an act of the defendant's servants outside of the servants' duty as employees of the defendant, by an act of the defendant's servants which, while not in the course of the servants' employment, is none the less a violation of the duty owed by the defendant under the defendant's contract with the plaintiff, the only action that can be brought is an action founded upon the duty arising out of the contract."

CORRESPONDENCE.

Signing of Instrument to Constitute Forgery and Regulating Width of Ties Used on Improved Roads.

December 15th, 1917.

Editor Virginia Law Register,
Charlottesville, Va.

Dear Sir:—

I beg to advise you that petitions for writ of error to judgments of the Circuit Court of Wise County rendered in two criminal cases, involving points not heretofore directly decided by the Supreme Court of Appeals and which may be of general interest to the profession, have been refused by the Supreme Court of Appeals at its present session, thus affirming the judgment of the Circuit Court. I write to call your attention to these rulings, so that if you care to do so, you may call same to the attention of the profession through your columns.

One of these cases is that of The Commonwealth *v.* B. D. Combs, indicted for forgery, tried and convicted at the July term, 1917, and sentenced to two years in the penitentiary. This case involved the question of the sufficiency of the signature to a forged instrument. The instrument in question was a promissory note, the signature thereto being as follows: "James X Collins." The signature was apparently intended to be made by a mark, but no mark had been made in the space apparently intended for it. It was contended for the defendant that the signature was incomplete, and that it had no apparent legal efficacy, but the Court held that it could not be said, as a matter of law, that the instrument could by no possibility operate to the prejudice of another's right, and left

it to the jury to say whether any person might, by any possibility, be defrauded by the instrument. In this ruling, the Court followed the ruling in the case of Lemasters *v.* State, 95 Ind., 367, which is the only case I have found in which the point has been directly passed upon.

The other case is that of The Commonwealth *v.* Arthur Poteete, tried and convicted at the October term, 1917. In this case the defendant was charged with violating a regulation passed by the Board of Supervisors of this county, prescribing a maximum load which might be hauled upon the improved roads of the county on wagons and other vehicles equipped with tires not over a certain width. Chap. 212, Acts of 1906, as amended in 1912 (Acts 1912, p. 503), gives to boards of supervisors power to enact certain legislation for the protection of the public roads, but provides that they shall enact no law fixing the width of tires until after the question shall have been submitted to a vote of the people. In this county the question whether the board of supervisors should enact a law fixing the width of tires had never been submitted to a vote of the people. It was contended on behalf of the defendant that the regulations adopted by the board of supervisors, limiting the amount of load to be hauled on tires of a certain width, was, in effect, fixing the width of tires, and that such regulations were invalid in the absence of a vote of the people authorizing the same. It was contended for the Commonwealth that the regulations in question did not fix the width of tires; that they did not prohibit the use of tires of any width, but left it free for the use of vehicles equipped with tires of any width at the will of the owner. This question was considered by the Supreme Court of Appeals in the case of Polglaise *v.* The Commonwealth, 114 Va. 850; 76 S. E. 897, but since in that case there had been a prior vote of the people authorizing the board of supervisors to fix the width of tires, the opinion, while drawing the distinction between fixing the width of tires and regulating or limiting the load that might be hauled on tires of a certain width, left the direct question presented in the instant case somewhat in doubt. This doubt has been removed by the refusal of a writ of error in this case, and it is now settled that the provision in the statute in question which prohibits boards of supervisors from enacting a law fixing the width of tires until after a vote of the people vesting them with authority to do so is not violated by the enactment of regulations limiting the load that may be hauled on tires of a certain width.

Since this same question may be pending, or will undoubtedly arise, in a number of other counties, the decision in this case will be of immediate and practical interest.

Yours very truly,

C. R. McCorkle,

Commonwealth's Attorney, Wise, Va.